IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 22047 of 2004

Between:

S.K. Yaseem Ahmed, S/o. Sk. Mastan,
ASM.I, Nanded Division, SC Railway, Nanded, Maharashtra.

. PETITIONER

AND

1. The Secretary, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, SC Railway, Secunderabad.
3. The Divisional Railway Manager, SC Railway Nanded Division, Nanded.
4. The Senior Divisional Operating Manager, SC Railway, Nanded Division, Nanded.
5. The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6. The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ, order or direction particularly one in the nature of Writ of Certiorari calling for the records relating to the impugned judgment in OA.619/2004 dated 22-7-2004 and quash the same and further allow the OA as prayed for with all consequential reliefs and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

WRIT PETITION NO : 22080 of 2004

Between:

S. Ramulu, S/o. Laxamaiah,
T.H.S.I/C&W/SSE, SC Railway, Khazipet.

..... PETITIONER

AND

1. The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 . The General Manager, SC Railway, Secunderabad.
3. The Divisional Railway Manager, SC Railway, Secunderabad Division, Secunderabad.
4. The Sr. Divisional Mechanical Engineer (C&W), Sanchar Bhavan, SC Railway, Secunderabad Division, Secunderabad.
5. The South Central Railway Employees Coop. Credit Society, rep by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of certiorari calling for the records relating to the impugned judgment in OA.1376/03 dated 13-7-2004 and quash the same and further allow the OA as prayed for with all consequential relief's and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

WRIT PETITION NO : 22081 of 2004

Between:

M. Narsing Rao, S/o. Laxmaiah,
S.II Technician, Corrosion Shop, Carriage Workshop, SC Railway, Secunderabad.

..... PETITIONER

AND

1 The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 The General Manager, SC Railway, Secunderabad.
3 The Chief Workshop Manager, SC Railway, Carriage Workshop, Lalaguda, Secunderabad.
4 The Workshop Manager, SC Railway, Carriage Workshop, Lalaguda, Secunderabad.
5 The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any Writ, Order or direction particularly one in the nature of Writ of Certiorari calling for the records relating to the impugned Judgment in O.A.No. 1513/03 dated 13-07-2004 and quash the same and further allow the OA as prayed for with all consequential relief's and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

WRIT PETITION NO : 22082 of 2004

Between:

S.V. Ramajogi Sarma, S/o. Suryanarayana,
J.E./II(D)/Sr.DEN/Coord, SC Railway, Secunderabad.

..... PETITIONER

AND

1 The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 The General Manager, SC Railway, Secunderabad.
3 The Divisional Railway Manager, SC Railway, Secunderabad Division, Secunderabad.
4 The Sr.Divisional Engineer (Coordination) BG, Sanchalan Bhavan, SC Railway, Secunderabad Division, Secunderabad.
5 The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction particularly one in the nature of Writ of Certiorari calling for the records relating to the impugned judgment in OA.No. 1377/03 dated 13-07-2004 and quash the same and further allow the OA as prayed for with all consequential relief's and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

WRIT PETITION NO : 22083 of 2004

Between:

A. Balaiah, S/o. Venkaiah,

Tech.Gr.I, Dy. CSTE/S&T/workshop/Office, Mettuguda,

Secunderabad.

..... PETITIONER

AND

1 The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 The General Manager, SC Railway, Secunderabad.

3 The Dy. Chief Signal & Telecommunications Engineer/S&T, S&T Workshop, Mettuguda, Secunderabad.
4 The Production Engineer, S & T Workshop, SC Railway, Mettuguda, Secunderabad.
5 The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ order or direction particularly one in the nature of writ of certiorari calling for the records relating to the impugned judgment in OA.No.1511/03 Dt. 13.07.2004 and quash the same and further allow the OA as prayed for with all consequential relief's and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

WRIT PETITION NO : 22084 of 2004

Between:

N. Babu Rao, S/o. Kattaiah,
Gangman (P.Way), SSE, Alair, SC Railway, Nalgonda District.

..... PETITIONER

AND

1 The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 The General Manager, SC Railway, Secunderabad.
3 The Divisional Railway Manager, SC Railway, Secunderabad Division, Secunderabad.
4 The Assistant Divisional Engineer, (North), SC Railway, Secunderabad Division, Kazipet.
5 The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to Issue a Writ, Order or direction particularly one in the nature of Writ of certiorari calling for the records relating to the impugned judgment in OA.1374/03 Dt. 13.07.2004 and quash the same and further allow the OA as prayed for with all consequential relief's and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

WRIT PETITION NO : 22085 of 2004

Between:

N. Prasad, S/o. Yesuratnam,
Supervisor (P.Way)/SSE/PW, SC Railway, Bellampally, Adilabad District.

..... PETITIONER

AND

1 The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 The General Manager, SC Railway, Secunderabad.
3 The Divisional Railway Manager, SC Railway, Secunderabad Division, Secunderabad.
4 The Sr. Divisional Engineer (North), SC Railway, Secunderabad Division, Secunderabad.
5 The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of certiorari calling for the records relating to the impugned judgment in OA 1375/03 dated 13-7-2004 and quash the same and further allow the OA as prayed for with all consequential relief's and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

WRIT PETITION NO : 22110 of 2004

Between:

R.Visweswara Reddy, S/o.Subba Reddy,
CMS GR.II, Diesel Loco Shed, S.C. Railway,

Gooty, Anantapur District.

..... PETITIONER

AND

1 The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 The General Manager, SC Railway, Secunderabad.
3 The Divisional Railway Manager, SC Railway, Secunderabad Division, Secunderabad.

4 The Sr.Divisional Mechanical Engineer (Diesel), SC Railway, Guntakal Division, Goooty, Anantapur.
5 The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of certiorari calling for the records relating to the impugned Judgment in OA.1514/03 dated 13-07-2004 and quash the same and further allow the OA as prayed for with all consequential relief's and benefits and be pleased to pass order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 to 4: MR.R.S.MURTHY, SC FOR RAILWAYS

Counsel for the Respondent Nos.4 and 5: Mr. K.RAMANUJA CHARY

The Court made the following:

COMMON ORDER:

(PER B.SESHASAYANA REDDY, J)

1. The batch of writ petitions are filed assailing the order of Central Administrative Tribunal, Hyderabad Bench at Hyderabad passed in O.A.Nos.1374, 1375, 1376, 1377, 1511, 1512, 1513 and 1514 of 2003 and O.A.No.619 of 2004. The writ petitioners have challenged the charged memos dated 22.8.2003 issued to them individually by the disciplinary authority. The writ petitioners questioned the respective charge memos before the Central Administrative Tribunal, Hyderabad Bench by filing individual Original Applications. The learned Tribunal dismissed O.A.Nos.1374 of 2003 and batch by a common order dated 13.7.2004. The learned Tribunal by a separate order dated 22.7.2004 also dismissed O.A.No.619 of 2004 on the ground that the same was connected case to O.A.No.1374 of 2003 and batch.

2. Since the issue involved in all these writ petitions is one and the same, they are disposed of by this common order.

3. Facts of the case, in brief, leading to filing of these writ petitions are :

The petitioners in all these writ petitions are railway employees. There is a society called South Central Railway Employees Credit Society Limited, Secunderabad, originally established in 1923 and registered under A.P. Cooperative Societies Act No.7 of 1964 (hereinafter referred to as Society). Subsequently, the said Society came to be brought under the provisions of Multi-State Co-operative Societies Act, 1984, presently known as Multi-State Co-operative Societies Act, 2002, (hereinafter referred to as MSCSA) since the operations of the Society are spread over more than one State like Karnataka, Goa, Andhra Pradesh and Maharashtra. The writ petitioners were elected as Directors of the Society in the year 1999. Their term of office expired on 30.6.2002. The disciplinary authority had issued individual charge memos on 10.5.2004 to the writ petitioners alleging certain irregularities in appointing 27 candidates (Group-C 12 and Group-D 15) into the service of the Society in exercise of powers as Directors. The writ petitioners submitted representations raising jurisdictional aspect to issue charge memos for their actions as Directors of the Society, the functions of which are governed by the provisions of MSCSA. The disciplinary authority rejected their objections and appointed an enquiry officer.

Assailing the order of the disciplinary authority, the writ petitioners filed O.As before the Tribunal to call for the records relating to the charge memos and to quash the same as illegal and without jurisdiction and consequently to restrain the disciplinary authority from taking any action in pursuance of the charge memos.

4. The respondents have filed their reply statements in O.A.No.1376 of 2003 and O.A.No.1512 of 2003. The sum and substance of the reply statements filed by the disciplinary authority is that the writ petitioners being railway employees come within the purview of the Railway Servants (Discipline and Appeal) Rules, 1968, which have the approval of the President of India, and under the said Rules the disciplinary authority has nominated Sri.R.Prabhakar, AEO, as Enquiry officer to conduct enquiry and to submit his report. The Railway Board's letter dated 19.6.1973 authorises the disciplinary action against staff for misappropriation and other irregularities amounting to serious misconduct in the discharge of duty connected with the affairs of the institutions like the Railway Cooperative Societies, Clubs, and other similar bodies which are established and run by the railway servants. The applicants had enjoyed all the benefits that are applicable to railway servants and also the attendant benefits attached to the Directors and thus they cannot be permitted to contend that they are not liable to the disciplinary proceedings by the railway administration. The writ petitioners never ceased to be railway servants while discharging the functions as Board of Directors of the Society. Merely because the affairs of the Society are governed by the Societies Act, the writ petitioners cannot claim severance of the relationship with the Railway administration while discharging the functions of the Board of Directors relating to the affairs of the Society. U/s 51 of the A.P. Cooperative Societies Act, 1964 the Registrar of Cooperative Societies can enquire into the affairs of the Society and have powers of inspection, summons and examine documents and person etc. U/ 59 of the said Act, the Registrar can place under suspension any paid Officer or servant of the Society if it is brought to the notice that they were responsible for the misappropriation, breach of trust or other offences in relation to the Society. The powers vested by the Registrar under the act is only against the said Officers and the employees of the Society. The writ petitioners being neither paid servants nor employees of the Society, disciplinary action against them has to be taken by the appropriate authority under the Railway Servants (Discipline and Appeal) Rules, 1968 as clarified by the Railway Board in its circulars dated 19.6.1973. In the bye-laws of the Society there is no provision to proceed against the Director who is a Railway employee. The Railway Board issued instructions by proceedings dated 19-6-1973 authorising the railway administration to take disciplinary action against the staff in discharge of their duty connected with the Railway Cooperative Societies.

5. The learned Tribunal, on considering the material on record and on hearing the learned counsel for parties, held that the acts and omissions attributed to the writ petitioners in the

articles of charge do constitute irregularities amounting to serious misconduct in discharge of their duties in connection with the affairs of the Society as Managing Director/Directors and thus all the Oas are devoid of merits and are accordingly dismissed. Hence, these writ petitions by the applicants.

6. Learned counsel for the petitioners submits that R5-Society is an independent and autonomous body governed by the provisions of MSCSA and the action taken by the Directors under the bye-laws of the Society is not subject to any supervision or control by the Railways. The Railway Board instructions through its letters dated 26.7.1955 and 19.6.1973 are unenforceable so far as they infringe the provisions of MSCSA. MSCSA is a self contained Act with statutory functions to oversee the affairs of the Society registered under the said Act and to take corrective measures including disqualifying the Directors, superceding the Board of Directors and also to annul any action taken by the Board of Management in contravention of the Act and Rules made there under. The Society has no financial aid from the Railways nor it has any share capital. Railways have no jurisdiction to take disciplinary action in respect of any act or omission committed by the railway servant not in his capacity as a railway servant or outside the railway premises. Even otherwise casual labour appointments were made after the notification and as per the procedure enunciated in the bye-laws and appointment orders were issued by the Secretary of the Society after the approval of the Board of Management. In nutshell, his submission is that the disciplinary authority has no jurisdiction to initiate action for the acts and omissions committed by the writ petitioners while discharging the functions as Managing Director/Director of the Society during the period from 1.7.1999 to 30.6.2002. In support of his submissions he placed reliance on the following decisions:

1. DEEP CHAND v. STATE OF U.P.
2. STATE OF ORISSA v. M.A.TULLOCH & CO.
3. STATE OF ASSAM v. HORIZON UNION
4. STATE OF J & K v. M.S.FAROOQI
5. UNION OF INDIA v. J.AHMED
6. M/s.GLAXO LABORATORIES (I) LTD. V. PRESIDING OFFICER, MEERUT
7. A.L.KALRA v. P & E CORPN. OF INDIA LTD.
8. VIJAY KUMAR SHARMA v. STATE OF KARNATAKA
9. UNION OF INDIA (RAILWAY BOARD) v. J.V.SUBHAIAH
10. MANDLAPPA v. M.R.O.

11. B.VANI KUMARI v. UNION OF INDIA AND OTHERS

7. In the first cited decision, the Supreme Court enunciated the principles for ascertaining repugnancy between two statutes. Repugnancy between two statutes may be ascertained on the basis of the following principles:

i. Whether there is direct conflict between the two provisions;

ii. Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and

iii. Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

8. In the second cited decision, the Supreme Court observed that repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation.

9. In the third cited decision, the appointment of Shri B.C.Dutta as Presiding Officer of an Industrial Tribunal came up for consideration. Section 7-A(3) of the Industrial Disputes Act, 1947 prescribes the qualifications for appointment of Presiding Officer of Industrial Tribunal. Sec.7-A inserted in the Industrial Disputes Act, 1947 by Act No.36 of 1956 with effect from March 10, 1957. Assam Act No.8 of 1962 which received the assent of the President on April 25, 1962 inserted in S.7-A(3) after clause (a). In 1964, the Parliament passed the Industrial Disputes (Amendment) Act (No.36 of 1964). As per the amending Act inserted in clause 7-A(3) after clause (a), a person who has for a period of not less than three years, has been a District Judge or Additional District Judge is eligible to be appointed as Presiding Officer of the Industrial Tribunal. The Supreme Court while examining the proviso to clauses (aa) inserted by Assam Act 36 of 1964 and clause (aa) inserted by the Central Act observed as follows:

" 6. The appointment of Shri Dutta as the Presiding Officer of the Industrial Tribunal was made without consultation with the High Court. Respondent No.1 submitted that, consequently, there was no compliance with the proviso to S.7-A (3) (aa) inserted by Assam Act NO.8 of 1962. This contention has no force. In respect of the subject matter of the appointment of a person who has for a period of not less than three years been a District Judge or an Additional District Judge, Cl.(aa) inserted by Central Act No.36 of 1964 impliedly repealed Cl. (aa) inserted by the Assam Act. Clause (aa) inserted by the Central Act is intended to be an exhaustive code in respect of this subject-matter. The Central Act now occupies this field. The provisions of Cl.(aa) inserted by the Assam Act on this subject are repugnant to Cl.(aa) inserted by the Central Act and by Art.254 of the Constitution, to the extent of this repugnancy, is void. Clause (aa) of S.7-A (3) inserted by the Central Act does not require any consultation with the High Court."

10. In the fourth cited decision, the facts are that M.S.Farooqi is a Member of Indian Police Service. He is borne on the Jammu and Kashmir cadre. On March 12, 1964, an anonymous complaint was received by the Commission, set up under the Commission Act. On March 20, 1964, the Commission asked for a report from the Deputy Inspector General of Police. The Deputy Inspector General of Police (Anti Corruption Organization) raised the question of the jurisdiction of the Commission. The Commission, however, held that the Commission Act was applicable in its entirety to Government servants belonging to Jammu and Kashmir cadre of the All India Services. The objection raised by the Investigating Agency was thus over ruled. The Investigating Agency was directed to continue investigation of the case and submit a report. There upon M.S. Farooqi filed the writ petition in the High Court challenging the jurisdiction of the Commission. The High Court allowed the petition, but later granted certificate of fitness and the appeal came to be filed on behalf of the State of Jammu Kashmir. A question came up for consideration as to the applicability of All India Services (Discipline and Appeal) Rules, 1955 or Jammu and Kashmir Government Servants (Prevention of Corruption) Act, 1962 for All India Services. The Supreme Court held as follows:

" In so far as the impugned Act deals with the infliction of disciplinary punishments it is repugnant to the (Discipline and Appeal) Rules. Parliament has occupied the field and given clear indication as to the only manner in which any disciplinary action should be taken against the members of All India Service. Though the provisions of the State Act dealing with investigation for possible criminal prosecution are not repugnant to the Discipline and Appeal Rules, they are inextricably intertwined with the provisions dealing with infliction of disciplinary punishment and as such the whole Act must be read as to leave the members of the All India Services outside its purview."

11. In the fifth cited decision, the Supreme Court had an occasion to consider as to what constitutes misconduct. Whether lack of efficiency, failure to attain higher standards of administration every day etc. constitute misconduct. The Supreme Court held that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of

duty and a lapse in performances of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

12. In the sixth cited decision, the Supreme Court held that misconduct must have casual connection with place of work and with duty hours and the employer has no extra territorial jurisdiction under the standing orders to punish for misconduct. Where the Standing Orders of an establishment provide that certain acts would constitute misconduct if “committed within premises of the establishment or in the vicinity thereof” then any misconduct committed anywhere irrespective of the time place content where and when it is committed cannot be comprehended to be the misconduct within the meaning of the Standing Orders merely because it has some remote impact on the peaceful atmosphere in the establishment. The words ‘committed within premises of the establishment or in the vicinity thereof’ are words of limitation and they must cut down the operation of the Standing Order. The misconduct prescribed in a Standing Order which would attract a penalty has a casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours. The casual connection in order to provide linkage between the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous.

13. In the seventh cited decision, an employer of the public sector corporation was charged of not refunding the advance taken for house building within the time stipulated under the Rules framed for granting house building advance. He was also charged of not returning within stipulated time advance taken for purchasing motorcycle. He was removed from service after enquiry on ground that the violation of the Rules for granting House Building Advance amounted to not maintaining absolute integrity and thus he was found guilty of misconduì¥Á7 ð¿Ö©bjbjUU *Ð7|7|¤lyÿÿÿÿÿÿljtL°°°´ žžž8Öì¥Á7 ð¿Ö©bjbjUU *Ð7|7|¤lyÿÿÿÿÿÿljtL°°°´ žžž8Ötion taken against him was perse arbitrary and in violation of Articles 14 and 16 of the Constitution of India in as much as the allegations did not constitute a misconduct within the meaning of the expression in PEC Employees (Conduct, Discipline & Appeal) Rules, 1975. The writ petition ended in dismissal. He carried the matter to the Supreme Court. The Supreme Court observed as follows:

> “ Where one of the rules of a public sector company relating to conduct and discipline of its employees provided for maintaining “absolute integrity” and to “do nothing which is unbecoming of a public servant”, held that the rule was vague and of a general nature what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given

context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Failure to keep to high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the misconduct, specifically enumerated in he conduct and discipline rules. It further held that the rules granting advance themselves provided the consequences of breach of condition. Therefore, there was no ground for initiating disciplinary inquiry as the breach of the Rules did not constitute misconduct. Moreover by withholding the salary and then removing him from service would expose him to double jeopardy.

14. In the eighth cited decision, a question came up for consideration before the Supreme Court as to whether the provisions of Secs.14 and 20 of the Karnataka Contract Carriages (Acquisition) Act (21 of 1976) and the provisions of Secs 74 and 80 of M.V. Act, 1988 are conflicting with each other. Majority view has been held that the provisions of Secs.14 and 20 of Karnataka contract Carriages (Acquisition) Act are not impliedly repealed by the provisions of Motor Vehicles Act, 1988 and there is no repugnancy in the provisions of Ss.14 and 20 of the Karnataka Act and Ss.74 and 80 of M.V. Act, 1988. The former provisions are ancillary to give effect to the acquisition and nationalization of the Road Transport within local territorial limits. The later provisions are general in nature and in furtherance of the object of the Act which is to regulate transport. The subject matters of both the statutes and the object of the two sets of provisions are, therefore, materially different. Both these statutes can stand together. The legislative intent is clear. Since, the Parliament had enacted the later statute knowing fully well the existence of the earlier statute and yet it did not expressly repeal it, it will be presumed that the Parliament felt that there was no need to repeal the said statute.

15. In the ninth cited decision, the Supreme Court held that the officers, employees and servants appointed by the Railway Cooperative Stores/Societies cannot be treated on par with railway servants under paragraph 10(B) of Railway Establishment Code nor can they do give parity of status, promotions, scales of pay, increments etc. The Supreme Court held in paras 17 and 18 of its judgment as follows:

" **(17)** IT is seen that service conditions of the employees, officers and servants of the Stores/Societies are not regulated by the Railway Administration. They are governed by the bye-laws of the Societies subject to control and sanction by the Registrar under the State Act or the relevant provisions. There is no obligation on the part of the Railway Administration to provide security for those employees. The disciplinary control by the Society concerned is subject to other laws and is exclusively domestic in character. The Railway Establishment Code is not applicable to them. Their appointment is subject to bond prescribed by the Registrar. The arrears of funds or misappropriated amounts etc. are recoverable under the provisions of the State Act and the Rules made thereunder. The services of the staff are liable to termination in terms of the State Act, Rules and

bye-laws.

(18) IN other words, there is a dual control over the staff by the Society and the Registrar. In that behalf, the Railway Administration has no role to play. If the subsidy is considered to be a controlling factor and the Societies/Stores as an intervening agency or viel between the Railway Administration and the employees, the same principle would equally be extendible to the staff, teachers, professors appointed in private educational institutions receiving aid from the appropriate State/Central Government to claim the status of Government employees. Equally, other employees appointed in other Co-operative Stores/Societies organized by appropriate Government would also be entitled to the same status as Government servants. Appointment to a post or an office under the State is regulated under the statutory rules either by direct recruitment or appointment by promotion from lower ladder to higher service or appointment by transfer in accordance with the procedure prescribed and the qualifications specified. Any appointment otherwise would be vertical transplantation into services de hours the rules. Appointment through those institutions becomes gateway for back door entry into Government service and would be contrary to the prescribed qualifications and other conditions and recruitment by Public Service Commission or appropriate agencies. As contended, if the employees of the societies like co-operative canteens and declared to be railway servants, there would arise dual control over them by the Registrar and Railway Administration but the same was not brought to the attention of the Court when M.M. Khan's case (AIR 1990 SC 937) was decided."

16. In the tenth cited decision, it has been held by our High Court that A.P.Assigned Lands (Prohibition of Transfer) Act, 1977 (Act 9 of 1977) is a self contained Act and the Act applies to assignments made both prior to and after the commencement of the Act. Thus, where any assignee has violated any conditions of assignment, the authority prescribed under the Act has got jurisdiction to take action for resumption of the land. Therefore, when the A.P. Act 9 of 1977 has provided the entire machinery for cancellation of alienations made prior or after the commencement of the Act, the Joint Collector cannot exercise powers under the Board Standing Order and therefore, the impugned order of the Joint Collector is without jurisdiction.

17. In the eleventh cited decision, a Division Bench of this Court (of which one of us G.Bikshapathy, J was the member) held that action could be initiated against an employee only if the act alleged or complained of against him falls within the enumerated misconduct.

18. In nutshell, the submissions of learned counsel appearing for the writ petitioners are as follows:

a. Firstly, MSCSA is a self contained Act and it deals with all situations and thus application of Railway Services (Conduct) Rules, 1966 for the acts and

omissions of the writ petitioners while discharging the function as Managing Director or Director is misconceived;

b. Secondly, the acts and omissions of the writ petitioners as Managing Director or Directors, if any, stand outside the scope of Railway Servants (Discipline and Appeal) Rules, 1968 and they do not come within the meaning of misconduct as defined in the Railway Services (Conduct) Rules, 1966.

19. Learned Standing Counsel appearing for the respondents submits that initiation of disciplinary proceedings against the Directors or Managing Director of the Society for any acts or omissions which are in the nature of serious irregularities amounts to unbecoming of a railway servant which itself is sufficient to initiate disciplinary action under Railway Servants (Discipline and Appeal) Rules, 1968. He further submits that the Railway Board issued instructions under letter dated 19.6.1973 authorising the railway administration to impose penalty on a Railway servant for "good and sufficient reasons" for the irregularities or omission committed by him in connection with the affairs of institutions like Railway Cooperative societies etc. However, whether there are "good and sufficient reasons" and whether there is prima facie evidence are matters which will have to be considered appropriately by the Disciplinary authority before any action is initiated under the said Disciplinary Rules. He further submits that the writ petition questioning the charge memo is incompetent since the writ petitioners can submit their statement of defence taking all pleas available to them and the Department would consider their pleas in accordance with the Rules and Regulations in vogue. In support of his submissions he refers to the Circular letters of Railway Board dated 26.7.55 and 19-6-73 and placed reliance on the decisions of Supreme Court in BALBIR CHAND v. FOOD CORPORN. OF INDIA LTD. and THE SPECIAL DIRECTOR & ANR v. MOHD. GHUYLAM GHOUSE & ANR.. In Balbir Chand's case, the Supreme Court held that an authority lower than an appointing authority cannot take any decision in the matter of disciplinary action but there is no prohibition in law that the higher authority should not take the decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that in doing so there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In The Special Director's case, the Supreme Court deprecated the practice of High Courts entertaining the writ petition questioning the legality stalling enquiries as proposed and retiring investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally nonest in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can

even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court.

20. Since the statement of Articles of charge framed against the writ petitioners is similar we deem it appropriate to extract the statement of articles of charge framed against S.K.Yaseem Ahmed, the writ petitioner in W.P.No.22047 of 2004 and it is thus:

> "Article-I:
>
> That the said Sri.Sk.Yaseen Ahmed, ASM-I under SS/NED while working as Director of South Central Railway Employees Co-operative Credit Society Ltd., Secunderabad during the period from 01-07-99 to 30-6-2002 had committed serious misconduct in that he failed to maintain absolute devotion to duty, and also acted in a manner unbecoming of a Railway Servant by not exercising his powers as Director and also as a Member of BOM which resulted into irregular appointment of 27 candidates (Group-C: 12, Group-D 15) in SCRECCS Ltd. in flagrant violation of procedure prescribed in Rule-5&6 of Service Conditions applicable to the society staff with regard to recruitment.
>
> Thus the said Sri.Sk.Yhaseen Ahmed violated Rule 3(1)(ii) & (iii) of Railway Services Conduct Rules, 1966, and Rule-5&6 of the Service Conditions applicable to the Society staff.
>
> Article-II:
>
> That the said Sri.Sk.Yaseen Ahmed, while working as Director of South Central Railway Employees Co-operative Credit Society Ltd., Secunderabad during the period from 01-7-99 to 30-6-2002 had committed serious misconduct in that he failed to maintain absolute devotion to duty and also acted in a manner unbecoming of a Railway Servant by not exercising his powers as Director and also as a Member of BOM which resulted into irregular appointments of 9 candidates (Group-C:4, Group-D: 5) in SCRECCS Ltd., who are relatives of Directors/MD/Secretary/Dy.Secretary in flagrant violation of procedure prescribed in Rule-5 & ^ of Service Conditions applicable to the Society Staff with regard to Recruitment.
>
> Thus, the said Sri.Sk.Yaseen Ahmed violated Rule 3(1)(ii) & (iii) of the Railway services Conduct Rules 1966, and Rule-5 & 6 of the Service Conditions applicable to the Society staff.
>
> Article-III:
>
> That the said Sri.Sk.Yaseen Ahmed, while working as director of South Central Railway Employees Co-operative Credit Society Ltd., Secunderabad during the period from 1-7-99 to 30-6-2002 had committed serious misconduct in that he failed to maintain absolute devotion to duty and also acted in a manner unbecoming of a Railway Servant by not exercising his powers as Director and also as a Member of BOM which resulted into irregular appointments of 3 wards of the staff who proceeded on VR and one ward of the staff who was to retire from service and whose cases was sponsored by Staff Sangh although no provisions exists in the recruitment and promotion rules of Service

conditions applicable to the SCRECCS Ltd staff.

Thus, the said Sri.Sk.Yaseen Ahmed violated Rule 3(1)(ii) &(iii) of the Railway Service Conduct Rules, 1966."

The Railway Servants are governed by the provisions contained in the Railway Services (Conduct) Rules, 1966. Various misconducts have been specified under the said Rules warranting initiation of disciplinary proceedings and imposing punishment in accordance with the procedure contained in Railway Servants (Discipline and Appeal) Rules, 1968. However, Rule 3 is general in nature specifying certain misconducts of general nature. The misconducts alleged against the petitioner are grouped in Rule (3) of the Railway Services (Conduct) Rules, 1966, which is extracted below:

" 3.General:

1. Every Railway Servant shall at all times:

iv. maintain absolute integrity;

v. maintain devotion to duty; and

vi. do nothing which is unbecoming of a Railway Servant. (emphasis added)

(2) (i) Every Railway Servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Railway Servants for the time being under his control and authority;

ii. Every Railway Servant shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in the best judgment except when he is acting under the direction of his official superior;

iii. The direction of the official superior shall ordinarily be in writing, and where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter, and

iv. A Railway Servant, who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible whereupon it shall be the duty of the official superior to confirm the direction in writing."

21. The Railway Board issued letter No.E 55 Rer.6-15, dated 26-7-1955 authorising the

disciplinary authorities to take appropriate disciplinary action against railway servant found guilty of charges of misappropriation and other irregularities amounting to serious misconduct in discharge of duties in connection with the affairs of institutions like Railway Cooperative Societies, Railway Institutes, Clubs and other similar bodies which are established and run by Railway servants. A further clarification was issued by Railway Board in its letter No.E(D&A)73 RG 6.23, dated 19.6.1973 stating penalties may be imposed on a Railway servant for “good and sufficient reasons” and therefore it is necessary that the railway servant should be found guilty of any offence by the management or the Registrar of Cooperative societies before action is taken under the disciplinary Rules. However, whether there are “good and sufficient reasons” and whether there is prima facie evidence are matters which will have to be considered appropriately by the Disciplinary authority before any action is initiated under the said Disciplinary Rules.

22. Undisputedly the petitioners were Managing Director/ Directors from 1.7.1999 to 30-6-2002. It is necessary, at this stage, to set out details of the writ petitioners and their position in the Railway Department and the Society, which is as under:

W.P.	O.A.	NAME	POST HELD IN RAILWAYS	STATUS IN THE SOCIETYDURING 1999-2002
22047/04	619/2004	S.K.YASEEM AHMED	ASM-I, NANDED DIVISION	DIRECTOR
22080/04	1376/03	S.RAMULU	THIS/C&W/SSE, KHAZIPET	DIRECTOR
22081/04	1513/03	M.NARSING RAO	SK-II TECHNICIAN, CORROSION SHOP, CARRIAGE WORKSHOP,SECUNDERABAD	DIRECTOR
22082/04	1377/03	S.V.RAMAJOGI SARMA	JUNIOR ENGINEER/II(D)/SR.DEN/COORD. SECUNDERABAD	DIRECTOR
22083/04	1511/03	A.BALAIAH	TECH.GR.I/DY.CSTE/S&T/WORKSHOP,SECUNDERABAD	DIRECTOR
22084/04	1374/03	N.BABU RAO	GANGMAN (P.WAY), SSE, ALAIR, NALGONDA	DIRECTOR
22085/04	1375/03	N.PRASAD	SUPERVISOR(P.WAY)/SSE/PW, BELLAMPALLY, ADILABAD	DIRECTOR
22110/04	1514/03	R.VISWESWARA REDDY	CMS GR-II, DIESEL LOCO SHED, GOOTY, ANANTAPUR	MANAGING DIRECTOR

23. The charges leveled against the petitioners is similar and it is with regard to irregular appointments of certain candidates in flagrant violation of the procedure prescribed under Rules 5 and 6 of Service conditions applicable to the Society staff. The candidates appointed include near and dear of the petitioners. The principal objection raised by the counsel appearing for the petitioners for initiating departmental action against the writ petitioners for alleged irregular appointments is that even if there are any illegal appointments, there are enough provisions in MSCSA and A.P. Cooperative Societies Act, 1964 to deal with the sì¥Á7 ð¿Ö©bjbjUU *Ð7|7|¤lyÿÿÿÿÿÿljtL°°°´ žžž8Öì¥Á7 ð¿Ö©bjbjUU *Ð7|7|¤lyÿÿÿÿÿÿljtL°°°´ žžž8Ös of the Board is only by supersession. No other provision is brought to our notice in the

above referred acts where under disciplinary action can be initiated against the Managing Director/Director of the Society. Primarily, the elected Directors are employees of railway. They are governed by Railway Service (Conduct) Rules, 1966. Under Rule 3 of Railway Service Conduct Rules, 1966 every servant shall at all times maintain absolute integrity, devotion to duty and do nothing which is unbecoming of a railway servant. If an act or omission of an employee reflects upon his character, reputation, integrity or devotion to duty or is an unbecoming act, certainly the employer can take action against him. In this context reference may be made to the following observations of Lopes, C.J. in PEARCE v. FOSTER:

> " If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

This view was reiterated by a three-Judges Bench of this Court in UNION OF INDIA v. K.K.DHAWAN.

24. The issue whether Railway Department has jurisdiction to conduct departmental proceedings against a railway servant for his omissions and commissions as Director of Railway Cooperative society came up for consideration before the Central Administrative Tribunal, Karnataka Bench at Bangalore in SRIRAMULU v. SHRI R.SRINIVASAN, ENQUIRY OFFICER AND ORS.. After exhaustive reference to various provisions in the Indian Railway Establishment Manual published by Government of India, Ministry of Railways (Railway Board) has held that the Director of the Railway Cooperative Societies, 1964 falls within the ambit of the definition of railway servant for the purpose of Railway Service (Conduct) Rules, 1966 and therefore he is liable for action under Rule 3 of Railway Services (Conduct), Rules, 1966. Consequently, the Railway administration had jurisdiction to proceed departmentally against the Director under Rule 3 of Railway Services (Conduct) Rules, 1966 for not maintaining absolute integrity and devotion to duty in discharge of his duties as Director of the Society. Indeed in the above cited decision has been referred in the impugned order. It is useful to refer para 12 of the afore cited judgment and it is thus:

> " The counsel for the applicant contends that the Railway Department has no jurisdiction to conduct departmental proceeding against the applicant in the matter as the affairs of the SRECCS bear no relation to that Department. The counsel for the respondent refutes the same on the premise, that Rule 3 of the RSCR applies to this case in terms of Rule 2 and 15(4) *ibid*. The explanation to Rule 2(b) as reproduced in para 8 supra reveals that a railway servant placed at the disposal of an organization shall for the purpose of the RSCR be

> deemed to be a railway servant, notwithstanding that his salary is drawn from sources other than the Consolidated Fund of India. In the instant case, the SRECCS can be deemed to be an organization at the disposal of which the services of the applicant were placed as a Dir. 9incharge of purchases) of that Society. The Railway Administration is seen to exercise substantial control over the management and functioning of this Society as is evident from the details furnished in para 9 (supra). According to Rule 15(4) *ibid* a railway servant is allowed to take part in the management of a cooperative society substantially for the benefit of railway servants. Taking into account the provisions of Rules 2 and 15(4) *ibid* in their entirety, and the nature and extent of the control exercised by the Railway Administration over the management and functioning of the Railway Cooperative Societies, we hold that the applicant falls well within the ambit of the definition of 'railway servant', for the purpose of the RCSR and therefore, he is liable for action under Rule 3 *ibid*. Consequently, the Railway Administration had jurisdiction to proceed departmentally against the applicant under Rule 3 *ibid*, for not maintaining absolute integrity and devotion to duty in the discharge of his duties as Director of the SRECCS."

25. Much argument has been advanced by learned counsel appearing for the writ petitioners that the action of the writ petitioners in appointing certain candidates was approved by the President and Secretary who were nominated by the Railway Administration and thus the writ petitioners could not be found fault in that regard. Reliance has been placed by him on the Division Bench decision of our High Court in B.VANI KUMARI v. UNION OF INDIA. In the cited decision, the writ petitioner therein was only one of the members in the committee, which prepared panel of promotees. The competent authority to promote the employees was not the petitioner therein. The panel prepared by the committee was required to be approved by the competent authority. It is the bounden duty of the competent authority to ensure that whether the panel is prepared properly or whether there is any omission or commission. There was no charge of the collusion, favoritism or corruption in preparing the panel against the petitioner therein. Keeping these facts in view it has been held in the cited case that the acts and omissions on the part of the petitioner therein would not come within the ambit of misconduct as envisaged in Clause 3 of The Railway Service (Conduct) Rules, 1966. The cited decision is inapplicable to the facts of the case on hand, since a specific accusation has been made against the writ petitioners that they accommodated their kith and kin in employment of the society. The accusation alleged against the writ petitioners if proved would definitely fall within the ambit of Rule 3 of Railway Service (Conduct) Rules, 1966. Therefore, this is not a fit case to interdict the departmental proceedings initiated against the writ petitioners. The disciplinary authority shall complete the enquiry as expeditiously as possible uninfluenced by any of the observations made in this order.

26. Accordingly, we find that the writ petitions are devoid of merits and are hereby dismissed. No costs.

Tnb

(G.BIKSHAPATHY, J)

Dated: 06-04-2005.

(B.SESHASAYANA REDDY,J)

LR COPY TO BE MARKED

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(for his Lordships kind perusal)

One fair copy to the Honourable Sri Justice

B.Seshasayana Reddy (for his Lordships kind perusal)

1 The Secretary, Railway Board, Rail Bhavan, New Delhi.
2 The General Manager, SC Railway, Secunderabad.
3 The Chief Workshop Manager, SC Railway, Carriage Workshop, Lalaguda, Secunderabad.
4 The Workshop Manager, SC Railway, Carriage Workshop, Lalaguda, Secunderabad.
5 The South Central Railway Employees Cooperative Credit Society, Rep. by its Secretary, Rail Nilayam, Secunderabad.
6 The Central Registrar, Central Registrar of Cooperative Societies, Hyderabad.

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9. The Sr.Divisional Mechanical Engineer, SC Railway, Guntakal Division, Gooty, Anantapur District.

10. The Asst.Divisional Engineer (North), SC Railway, Secunderabad Division, Kazipet.

11. The Dy. Chief Signal & Telecommunication Engineer/S&T Workshop, Mettuguda, Secunderabad.

12. The Production Engineer, S & T Workshop, SC Railway, Mettuguda, Secunderabad.

13. The Sr.Divisional Engineer (Coordination), Sanchar Bhawan, SC Railway, Secunderabad Division, Secunderabad.

14. The Sr.Divisional Mechanical Engineer (C&W), Sanchar Bhavan, SC Railway, Secunderabad Division, Secunderabad.